

*Presented from W. Lullish
& Jos. A. Fay - 1704*

LETTER
FROM
PHOCION
TO THE
CONSIDERATE CITIZENS
OF
NEW-YORK,

On the Politics of the Day.

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A LETTER, &c.

WHILE not only every personal artifice is employed by a few heated and inconsiderate spirits, to practise upon the passions of the people, but the public papers are made the channel of the most inflammatory and pernicious doctrines, tending to the subversion of all private security and genuine liberty; it would be culpable in those who understand and value the true interests of the community to be silent spectators. It is, however, a common observation, that men, bent upon mischief, are more active in the pursuit of their object, than those who aim at doing good. Hence it is in the present moment, we see the most industrious efforts to violate, the constitution of this state, to trample upon the rights of the subject, and to chicanery or infringe the most solemn obligations of treaty; while dispassionate and upright men almost totally neglect the means of counteracting these dangerous attempts. A sense of duty alone calls forth the observations which will be submitted to the good sense of the people

people in this paper, from one who has more inclination than leisure to serve them; and who has had too deep a share in the common exertions in this revolution, to be willing to see its fruits blasted by the violence of rash or unprincipled men, without at least protesting against their designs.

The persons alluded to, pretend to appeal to the spirit of Whiggism, while they endeavour to put in motion all the furious and dark passions of the human mind. The spirit of Whiggism, is generous, humane, beneficent and just. These men inculcate revenge, cruelty, persecution, and perfidy. The spirit of Whiggism cherishes legal liberty, holds the rights of every individual sacred, condemns or punishes no man without regular trial and conviction of some crime declared by antecedent laws, reprobates equally the punishment of the citizen by arbitrary acts of legislature, as by the lawless combinations of unauthorized individuals:--- While these men are advocates for expelling a large number of their fellow-citizens unheard, untried; or if they cannot effect this, are for disfranchising them, in the face of the constitution, without the judgment of their peers, and contrary to the law of the land.

The 13th article of the constitution declares,
 " that no member of this state shall be *disfranchised*
 " or *defrauded of any of the rights or privileges* sacred
 " to the subjects of this state by the constitution,
 " unless by the law of the land or the judgment of his
 " peers." If we enquire what is meant by the
 law of the land, the best commentators will tell us,
 that

121
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 726

that it means *due process of law, that is, by indictment or presentment of good and lawful men, ** and trial and conviction in consequence.

It is true, that *in England*, on extraordinary occasions, attainders for high treason, by act of parliament have been practiced, but many of the ablest advocates for civil liberty have condemned this practice, and it has commonly been exercised with great caution upon individuals only by name, never against *general descriptions* of men. The sense of our constitution on this practice, we may gather from the 41st article, where all attainders, other than for crimes committed during the late war, are forbidden.

If there had been no treaty in the way, the legislature might, by *name*, have attainted particular persons of high treason for crimes committed during the war, but independent of the treaty it could not, and cannot, without tyranny, disfranchise or punish whole classes of citizens by general descriptions, without trial and conviction of offences known by laws previously established declaring the offence and prescribing the penalty.

This is a dictate of natural justice, and a fundamental principle of law and liberty.

Nothing is more common than for a free people, in times of heat and violence, to gratify momentary passions, by letting into the government, principles and precedents which afterwards prove fatal to themselves. Of this kind is the doctrine of disqualification,



qualification, disfranchisement and banishment by acts of legislature. The dangerous consequences of this power are manifest. If the legislature can disfranchise any number of citizens at pleasure by general descriptions, it may soon confine all the votes to a small number of partizans, and establish an aristocracy or an oligarchy ; if it may banish at discretion all those whom particular circumstances render obnoxious, without hearing or trial, no man can be safe, nor know when he may be the innocent victim of a prevailing faction. The name of liberty applied to such a government would be a mockery of common sense.

The English Whigs, after the revolution, from an overweening dread of popery and the Pretender, from triennial, voted the parliament septennial.--- They have been trying ever since to undo this false step in vain, and are repenting the effects of their folly in the over-grown power of the new family. Some imprudent Whigs among us, from resentment to those who have taken the opposite side, (and many of them from worse motives) would corrupt the principles of our government, and furnish precedents for future usurpations on the rights of the community.

Let the people beware of such Counsellors.--- However, a few designing men may rise in consequence, and advance their private interests by such expedients, the people, at large, are sure to be the losers in the event whenever they suffer a departure from the rules of general and equal justice, or from the true principles of universal liberty.

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121
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These men, not only overleap the barriers of the constitution without remorse, but they advise us to become the scorn of nations, by violating the solemn engagements of the United States. They endeavour to mould the Treaty with Great-Britain, into such form as pleases them, and to make it mean any thing or nothing as suits their views.---- They tell us, that all the stipulations, with respect to the Tories, are merely that Congress will recommend, and the States may comply or not as they please.

But let any man of sense and candour read the Treaty, and it will speak for itself. The fifth article is indeed recommendatory ; but the sixth is as positive as words can make it. “ *There shall be no future confiscations made, nor prosecutions commenced against any person or persons, for, or by reason of the part which he or they may have taken in the present war, and no person shall, on that account, suffer any future loss or damage, either in his person, liberty, or property.*”

As to the restoration of confiscated property which is the subject of the fifth article, the states may restore or not as they think proper, because Congress engage only to recommend ; but there is not a word about recommendation in the 6th article.

Quotations are made from the debates in Parliament to prove that the whole is understood as recommendatory ; but the expressions in those quotations, turn altogether upon those persons who have been actually proscribed and their property confiscated,

cated; they have no relation to those who come under the sixth article, or who might be the objects of future prosecution or punishment. And to this it may be added, that it is absurd and inadmissible in fair reasoning, to combat the plain and authentic language of solemn treaty by loose recitals of debates in newspapers.

The sound and ingenuous construction of the two articles taken collectively, is this---that where the property of any persons, other than those who have been in arms against the United States, had been actually confiscated and themselves proscribed, there Congress are to recommend a restoration of estates, rights and properties; and with respect to those who had been in arms, they are to recommend permission for them to remain a twelvemonth in the country to solicit a like restoration: But with respect to all those who were not in this situation, and who had not already been the objects of confiscation and banishment, they were to be absolutely secured from all future injury to person, liberty or property.

To say that this exemption from positive injury, does not imply a right to live among us as citizens, is a pitiful sophistry; it is to say that the banishment of a person from his country, connexions and resources (one of the greatest punishments that can befall a man) is no punishment at all.

The meaning of the word *liberty* has been contested. Its true sense must be the enjoyment of the common privileges of subjects under the same government. There is no middle line of just construction

121

struction between this sense and a mere exemption from personal imprisonment ! If the last were adopted, the stipulation would become nugatory ; and by depriving those who are the subjects of it, of the protection of government, it would amount to a virtual confiscation and banishment ; for they could not have the benefit of the laws against those who should be aggressors.

Should it be said that they may receive protection without being admitted to a full enjoyment of the privileges of citizens, this must be either matter of right under the treaty, or matter of grace in the government. If the latter, the government may refuse it, and then the objection presents itself, that the treaty would by this construction be virtually defeated ; if matter of right, then it follows that more is intended by the word liberty, than a mere exemption from imprisonment, and where shall the line be drawn---not a capricious and arbitrary line, but one warranted by rational and legal construction ?

To say that by espousing the cause of Great-Britain they became aliens, and that it will satisfy the treaty to allow them the same protection to which aliens are entitled---is to admit that subjects may at pleasure renounce their allegiance to the state of which they are members, and devote themselves to a foreign jurisdiction ; a principle contrary to law and subversive of government. But even this will not satisfy the treaty ; for aliens cannot hold real property under our government ; and if they are aliens, all their real estates belong to the public.

This will be to all intents and purposes, a confiscation of property. But this is not all, how does it appear that the persons who are thus to be stripped of their citizenship, have been guilty of such an adherence to the enemy, as in legal contemplation amounts to a crime. Their merely remaining in their possessions under the power of the conqueror does not imply this; but is executed by the laws and customs of all civilized nations. To adjudge them culpable, they must be first tried and convicted; and this the treaty forbids. These are the difficulties involved, by recurring to subtle and evasive instead of simple and candid construction, which will teach us that the stipulations in the treaty, amount to an amnesty and act of oblivion.

There is a very simple and conclusive point of view in which this subject may be placed. No citizen can be deprived of any right which the citizens in general are entitled to, unless forfeited by some offence. It has been seen that the regular and constitutional mode of ascertaining whether this forfeiture has been incurred, is by legal process, trial and conviction. This *ex vi termini*, supposes prosecution. Now consistent with the treaty there can be no future prosecution for any thing done on account of the war. Can we then do by act of legislature, what the treaty disables us from doing by due course of law? This would be to imitate the Roman General, who having promised Antiochus to restore half his vessels, caused them to be sawed in two before their delivery; or the Plataeæ, who having promised the Thebans to restore

store their prisoners, had them first put to death and returned them dead.

Such fraudulent subterfuges are justly considered more odious than an open and avowed violation of treaty.

When these posture-masters in logic are driven from this first ground of the meaning of the treaty; they are forced to that of attacking the right of Congress to make such a stipulation, and arraigning the impudence of Great-Britain in attempting to make terms for our own subjects. But here as every where else, they are only successful in betraying their narrowness and ignorance.

Does not the act of confederation place the exclusive right of war and peace in the United States in Congress? Have they not the sole power of making treaties with foreign nations? Are not these among the first rights of sovereignty, and does not the delegation of them to the general confederacy, so far abridge the sovereignty of each particular state? Would not a different doctrine involve the contradiction of *imperium in imperio*? What reasonable limits can be assigned to these prerogatives of the union, other than the general safety and the *fundamentals* of the constitution? Can it be said that a treaty for arresting the future operation of positive acts of legislature, and which has indeed no other effect than that of a pardon for past offences committed against these acts, is an attack upon the fundamentals of the state constitutions? Can it be denied that the peace which was made, taken collectively, was manifestly for the general good; that
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it was even favourable to the solid interests of this country, beyond the expectation of the most sanguine? If this cannot be denied; and none can deny it who know either the value of the objects gained by the treaty, or the necessity these states were under at the time of making peace?---It follows that Congress and their Ministers acted wisely in making the treaty which has been made; and it follows from this, that these states are bound by it, and ought religiously to observe it.

The *uti possidetis*, each party to hold what it possesses, is the point from which nations set out in framing a treaty of peace; if one side gives up a part of its acquisitions, the other side renders an equivalent in some other way. What is the equivalent given to Great-Britain for all the important concessions she has made. She has rendered the capital of this state and its large dependencies. She is to surrender our immensely valuable posts on the frontier, and to yield to us a vast tract of western territory, with one half of the Lakes, by which we shall command almost the whole furr trade; she renounces to us her claim to the navigation of the Mississippi, and admits us a share in the fisheries, even on better terms than we formerly enjoyed it. As she was in possession by right of war of all these objects, whatever may have been our original pretensions to them, they are by the laws of nations to be considered as so much given up on her part; and what do we give in return? We stipulate that there shall be no future injury to her adherents among us. How insignificant the equivalent in comparison with the

the acquisition ! A man of sense would be ashamed to compare them : A man of honesty, not intoxicated with passion, would blush to lisp a question of the obligation to observe the stipulation on our part.

If it be said that Great-Britain has only restored to us what she had unjustly taken from us, and that therefore we are not bound to make compensation--- This admits of several answers---First, That the fact is not true, for she has ceded to us a large tract of country to which we had even no plausible claim : Secondly, That however the principle of the objection might have been proper to prevent our promising an equivalent, it comes too late after the promise has been made : Thirdly, That as to the external effects of war, the voluntary law of nations knows no distinction between the justice or injustice of the quarrel ; but in the treaty of peace puts the contracting parties upon an equal footing ; which is a necessary consequence of the independence of nations ; for as they acknowledge no common judge, if in concluding peace both parties were not to stand upon the same ground of right, there never could be an adjustment of differences or an end of war. This is a settled principle.

Let us examine the pretext upon which it is disputed. Congress, say our political jugglers, have no right to meddle with our internal police. They would be puzzled to tell what they mean by the expression. The truth is, it has no definite meaning ; for it is impossible for Congress to do a single act which will not directly or indirectly affect the internal

ternal police of every state. When in order to procure privileges of commerce to the citizens of these states in foreign countries, they stipulate a reciprocity of privileges here, does not such an admission of the subjects of foreign countries to certain rights within these states operate, immediately upon their internal police ? And were this not done, would not the power of making commercial treaties vested in Congress, become a mere nullity ? In short if nothing was to be done by Congress that would affect our internal police, in the large sense in which it has been taken, would not all the powers of the confederation be annihilated and the union dissolved ?

But say they again, such a thing was never heard of as an indemnity for traitorous subjects stipulated in a treaty of peace. History will inform them that it is a stipulation often made. Two examples shall be cited ; The treaty of Munster which put an end to the differences between Spain and the United Provinces, after the revolution of those provinces : The treaty concluded in 1738, between the Empire, France, Spain, Poland, and several other powers, called the Christian peace. The war which preceded this treaty was one of the most complicated in which Europe had been engaged ; the succession to the Spanish Monarchy, and the right to the throne of Poland had been included in it, Stanislaus having been obliged to abdicate the crown. Different parts of the nations concerned had taken opposite sides. Many of the German Princes had been in arms against the Empire to which they owed obedience ;

diſſence : This treaty not only mutually ſtipulates indemnity to the ſubjects of the reſpective powers, but even reſtitution of *property* and *offices*. The Emperor, who contracted in behalf of the Empire, has much leſs extenſive powers as head of the Empire, than Congreſs as repreſentative of the United States.

But let it be admitted that Congreſs had no right to enter into this article---Do not equity and prudence ſtrongly urge the ſeveral ſtates to comply with it? We have in part enjoyed the benefit of the treaty ; in conſequence of which, we of this ſtate are now in poſſeſſion of our capital ; and this implies an obligation in conſcience, to perform what is to be performed on our part---But there is a conſideration which will perhaps have more force with men, who ſeem to be ſuperior to conſcientious obligations ; it is that the Britiſh are ſtill in poſſeſſion of our frontier poſts, which they may keep in ſpite of us ; and that they may eſſentially exclude us from the fiſheries if they are ſo diſpoſed. Breach of treaty on our part will be a juſt ground for breaking it on theirs. The treaty muſt ſtand or fall together. The wilful breach of a ſingle article annuls the whole*. Congreſs are appointed by the conſtitution to manage our foreign concerns. The nations with whom they contract are to ſuppoſe they underſtand their own powers and will not exceed them. If they do it in any inſtance, and we think it proper to diſavow the act,
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Vatel, Book 4, Ch. 4, § 47. Grotius, Book 3, Ch. 19, § 14.

it will be no apology to those with whom they contract that they had exceeded their authority. One side cannot be bound unless the obligation is reciprocal.

Suppose then Great-Britain should be induced to refuse a further compliance with the treaty, in consequence of a breach of it on our part, what situation should we be in? Can we renew the war to compel a compliance. We know, and all the world knows, it is out of our power? Will those who have heretofore assisted us take our part? Their affairs require peace as well as ours, and they will not think themselves bound to undertake an unjust war to regain to us rights which we have forfeited by a childish levity and a wanton contempt of public faith.

We should then have sacrificed important interests to the little vindictive selfish mean passions of a few. To say nothing of the loss of territory, of the disadvantage to the whole commerce of the union, by obstructions in the fisheries; this state would loose an annual profit of more than £. 50,000 *Sterling*, from the furr trade.

But not to insist on possible inconveniences, there is a certain evil which attends our intemperance, a loss of character in Europe. Our Ministers write that our conduct, hitherto, in this respect, has done us infinite injury, and has exhibited us in the light of a people, destitute of government, on whose engagements of course no dependence can be placed.

The men who are at the head of the party which contends for disqualification and expulsion, endeavoured

your to enlist a number of people on their side by holding out motives of private advantage to them. To the trader they say, you will be overborne by the large capitals of the Tory merchants; to the Mechanic, your business will be less profitable, your wages less considerable by the interference of Tory workmen. A man, the least acquainted with trade, will indeed laugh at such suggestion. He will know, that every merchant or trader has an interest in the aggregate mass of capital or stock in trade; that what he himself wants in capital, he must make up in credit; that unless there are others who possess large capitals, this credit cannot be had, and that in the diminution of the general capital of the State, commerce will decline, and his own prospects of profit will diminish.

These arguments, if they were understood, would be conclusive with the Mechanic:--- “ There is
 “ already employment enough for all the work-
 “ men in the city, and wages are sufficiently high.
 “ If you could raise them by expelling those who
 “ have remained in the city, and whom you con-
 “ sider as rivals, the extravagant price of wages
 “ would have two effects; it would draw persons
 “ to settle here, not only from other parts of this
 “ State, but from the neighbouring States:----
 “ Those classes of the community who are to em-
 “ ploy you, will make a great many shifts rather
 “ than pay the exorbitant prices you demand; a
 “ man will wear his old cloaths so much longer
 “ before he gets a new suit; he will buy imported
 “ shoes cheap rather than those made here at so

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“ dear a rate :---The owner of a house will defer
 “ the repairs as long as possible ; he will only have
 “ those which are absolutely necessary made ; he
 “ will not attend to elegant improvement, and the
 “ like will happen in other branches. These cir-
 “ cumstances will give you less employment, and
 “ in a very little time bring back your wages to
 “ what they now are, and even sink them lower.
 “ But this is not all : You are not required merely
 “ to expel your rival mechanics, but you must
 “ drive away the rich merchants and others who
 “ are called Tories, to please your leaders, who
 “ will persuade you they are dangerous to your li-
 “ berty (though in fact they only mean their own
 “ consequence.) By this conduct you will drive
 “ away the principal part of those who have the
 “ means of becoming large undertakers. The
 “ Carpenters and Masons in particular, must be con-
 “ tent with patching up the houses already built
 “ and building little huts upon the vacant lots, in-
 “ stead of having profitable and durable employ-
 “ ment in erecting large and elegant edifices.”

There is a certain proportion or level in all the
 departments of industry. It is folly to think to
 raise any of them, and keep them long above their
 natural height. By attempting to do it the œco-
 nomy of the political machine is disturbed, and
 till things return to their proper state, the society
 at large suffers. The only object of concern with
 an industrious artisan, as such, ought to be, that
 that there may be plenty of money in the commu-
 nity, and a brisk commerce to give it circulation
 and

and activity. All attempts at profit, through the medium of monopoly or violence, will be as fallacious as they are culpable.

But say some, to suffer these wealthy disaffected men to remain among us, will be dangerous to our liberties; enemies to our government, they will be always endeavouring to undermine it and bring us back to the subjection of Great-Britain. The safest reliance of every government is on mens interests. This is a principle of human nature, on which all political speculation to be just, must be founded. Make it the interest of those citizens, who, during the revolution, were opposed to us to be friends to the new government, by affording them not only protection, but a participation in its privileges, and they will undoubtedly become its friends. The apprehension of returning under the dominion of Great-Britain is chimerical; if there is any way to bring it about, the measures of those men, against whose conduct these remarks are aimed, lead directly to it. A disorderly or a violent government may disgust the best citizens, and make the body of the people tired of their Independence.

The embarrassed and exhausted state of Great-Britain, and the political system of Europe, render it impossible for her ever to reacquire the dominion of this country---Her former partizans must be convinced of this, and abandon her cause as desperate. They will never be mad enough to risk their fortunes a second time in the hopeless attempt of restoring her authority; nor will they have any inclination to do it, if they are allowed to be
happy

happy under the government of the society in which they live. To make it practicable, if they should be so disposed, they must not only get the government of this state, but of the United States into their hands. To suppose this possible, is to suppose that a majority of the numbers, property and abilities of the United States has been and is in opposition to the revolution. Its success is a clear proof that this has not been the case; and every man of information among us, knows the contrary.---The supposition itself would show the absurdity, of expelling a small number from the city, which would constitute so insignificant a proportion of the whole, as without diminishing their influence, would only increase their disposition to do mischief. The policy in this case would be evident, of appealing to their interests rather than to their fears.

Nothing can be more ridiculous than the idea of expelling a few from this city and neighbourhood, while there are numbers in different parts of this and other states, who must necessarily partake in our governments, and who can never expect to be the objects of animadversion or exclusion. It is confirming *many* in their enmity and prejudices against the state, to indulge our enmity and prejudices against a few.

The idea of suffering the Tories to live among us under disqualifications, is equally mischievous and absurd. It is necessitating a large body of citizens in the state to continue enemies to the government, ready, at all times, in a moment of commotion, to throw their weight into that scale which
meditates

meditates a change whether favourable or unfavourable to public liberty.

Viewing the subject in every possible light, there is not a single interest of the community but dictates moderation rather than violence. That honesty is still the best policy; that justice and moderation are the surest supports of every government, are maxims, which however they may be called trite, at all times true, though too seldom regarded, but rarely neglected with impunity. Were the people of America, with one voice, to ask, What shall we do to perpetuate our liberties and secure our happiness? The answer would be, "govern well" and you have nothing to fear either from internal disaffection or external hostility. Abuse not the power you possess, and you need never apprehend its diminution or loss. But if you make a wanton use of it, if you furnish another example, that despotism may debase the government of the many as well as the few, you like all others that have acted the same part, will experience that licentiousness is the fore-runner to slavery.

How wise was that policy of Augustus, who after conquering his enemies, when the papers of Brutus were brought to him, which would have disclosed all his secret associates, immediately ordered them to be burnt. He would not even know his enemies, that they might cease to hate when they had nothing to fear.

How laudable was the example of Elizabeth, who when she was transferred from the prison to the throne,

throne, fell upon her knees and thanking Heaven, for the deliverance it had granted her, from her bloody persecutors ; dismissed her resentment, " This act of pious gratitude says the historian, seems to have been the last circumstance in which she remembered any past injuries and hardships. With a prudence and magnanimity truly laudable, she buried all offences in oblivion, and received with affability even those, who had acted with the greatest virulence against her." She did more---she retained many of the opposite party in her councils.

The reigns of these two sovereigns, are among the most illustrious in history. Their moderation gave a stability to their government, which nothing else could have affected. This was the secret of uniting all parties.

These sentiments are delivered to you in the frankness of conscious integrity, by one who *feels* that solicitude for the good of the community which the zealots, whose opinions he encounters profess, by one who pursues not as they do, the honours or emoluments of the country, by one who, though he has had, in the course of the Revolution, a very *confidential* share in the public councils, civil and military, and has as often, at least, met danger in the common cause as any of those who now assume to be the guardians of the public liberty, asks no other reward of his countrymen, than to be heard without prejudice for their own interest.



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P. S.